

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

SPARK NETWORKS, PLC,	)	NO. 64757-1-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
WILL KNEDLIK and ANNA	)	
GIOVANNINI,	)	UNPUBLISHED OPINION
	)	
Appellants.	)	FILED: April 12, 2010
	)	

Lau, J. — Anna Giovannini claimed she had liens on real property formerly belonging to Will Knedlik. The trial court extinguished Giovannini’s purported liens and entered summary judgment in favor of Spark Networks, which had purchased the property at a sheriff’s sale. We agree with the trial court that Giovannini’s secured interests were unenforceable and that, in any event, she should be judicially estopped from asserting the liens because she made prior inconsistent claims in bankruptcy court. We therefore affirm the summary judgment in Spark’s favor. Because he no longer had any interest in the property, Will Knedlik was not aggrieved by the trial

court's ruling, and we grant Spark's motion to dismiss him as a party on appeal.

### FACTS

In 2002, Spark Networks, PLC, obtained a \$29,000,000 judgment in California against Will Knedlik. Spark filed the judgment in King County Superior Court in 2007 and eventually obtained a writ of execution on Knedlik's Kirkland residence and an order directing a sheriff's sale.

Knedlik opposed the sale and filed an affidavit of ownership, signed by his mother Anna Giovannini, in which Giovannini claimed that she had owned the Kirkland property since 1996. Giovannini also claimed that she had property liens that were superior to Spark's judgment lien.

Giovannini based her claim of ownership on a 1995 written agreement with Knedlik in which, among other things, Knedlik pledged the Kirkland property as security for loans from Giovannini. Giovannini moved for a probable validity hearing under RCW 6.19.030(2) to establish the validity of her claim. The court ordered that the sheriff's sale proceed and set the homestead exemption at \$40,000.

At the sheriff's sale on February 15, 2008, Spark purchased the Kirkland property for \$4,000,000 and applied the proceeds, less the \$40,000 homestead exemption, to the outstanding judgment against Knedlik. After a hearing on February 20, 2008, the trial court concluded that Giovannini failed to satisfy her burden of demonstrating the probable validity of her claim of ownership. The court found that the alleged transfer of an ownership interest in the 1995 agreement was void and that Knedlik was the fee simple owner of the property. The court later entered an order confirming the sheriff's sale and reaffirming its determination that Giovannini had failed

to create a triable issue on her ownership claim. The court did not address Giovannini's alleged property liens at this time.

On appeal, we affirmed, concluding that the trial court had not violated Knedlik and Giovannini's due process rights or committed any reversible error in rejecting Giovannini's claim to the Kirkland property under chapter 6.19 RCW. We also determined that Giovannini's assertion of a triable ownership issue was frivolous and that the superior court had not erred in confirming the sheriff's sale. See Spark Networks, PLC v. Knedlik & Giovannini, noted at 149 Wn. App. 1024, review denied, 167 Wn.2d 1003 (2009) (Spark I).

After the sheriff's sale, Knedlik continued to live in the Kirkland residence. After the conclusion of the one-year homestead redemption period, the trial court issued a writ of assistance, and the King County Sheriff's Office removed Knedlik from the property.

On March 6, 2009, Spark moved for summary judgment, alleging that Giovannini's liens were invalid and unenforceable. Giovannini filed a cross motion for summary judgment, alleging that her secured interests in the Kirkland property were superior to Spark's interests. The trial court denied Giovannini's motion and granted Spark's motion, concluding that all of Giovannini's alleged secured interests were invalid and unenforceable and that, in any event, Giovannini was judicially estopped from claiming any interests in the property and that any liens were equitably subordinated to Spark's interests. The trial court denied Giovannini's motion for reconsideration. Knedlik and Giovannini appeal the trial court's rulings.<sup>1</sup>

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<sup>1</sup> Our Supreme Court denied Knedlik and Giovannini's motion for direct review.

Motion to Dismiss

Knedlik and Giovannini jointly signed a notice of appeal on June 11, 2009, seeking review of the trial court's May 12, 2009 order denying reconsideration. Spark has moved to dismiss Knedlik from the appeal, contending that he lacks standing under RAP 3.1 to challenge the trial court's order rejecting Giovannini's claimed security interests. We agree.

Under RAP 3.1, "[o]nly an aggrieved party may seek review by the appellate court." An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected. See Breda v. B.P.O. Elks Lake City 1800 SO-620, 120 Wn. App. 351, 353, 90 P.3d 1079 (2004) (clients are not aggrieved by—and therefore may not appeal—sanctions imposed solely against attorney).

In Spark I, the court affirmed the trial court rulings that extinguished all of Knedlik's remaining interest in the Kirkland property and determined Giovannini had no valid claim of ownership. The current appeal involves only the trial court rulings determining the validity and priority of Giovannini's alleged liens on Knedlik's former residence, which now belongs to Spark. Knedlik has not identified any cognizable personal interests in the Kirkland property that remained after Spark I. Nor has he demonstrated how he would benefit from any judicial determination of the validity and priority of Giovannini's secured interests in the property.

In opposition to the motion to dismiss, Knedlik makes vague references to "contractual rights," the mortgagor-mortgagee relationship, and "never extinguished homestead rights." But he has not supported these conclusory allegations with any meaningful legal argument or citation to relevant authority that would illuminate the

nature of these alleged interests. We therefore decline to consider these contentions. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (appellate court will decline to consider issues unsupported by cogent legal argument and citation to relevant authority).

Nor do attempts to relitigate issues from Spark I confer standing to appeal on Knedlik. Claiming that the existence of errors from Spark I “overlap” with those in the present appeal, Knedlik and Giovannini contend that the trial court erred in rejecting Giovannini’s ownership claims, confirming the sheriff’s sale, and setting the amount of the homestead exemption. But the trial court’s resolution of these contentions was affirmed in Spark I and therefore became law of the case.

“In its most common form, the law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation.” Roberson v. Perez, 156 Wn.2d 33, 41, 123 P.3d 844 (2005). The doctrine promotes the strong policy of finality in the judicial process. Roberson, 156 Wn.2d at 41. Although an appellate court has discretion to disregard the policy if the prior decision is erroneous, Knedlik and Giovannini have not demonstrated any error in the prior decision or other circumstances that merit disregarding the policy. We therefore decline to review the decision in Spark I.

Knedlik’s attempt to challenge the trial court’s granting of the writ of assistance is

equally misplaced because he did not designate that ruling in the notice of appeal.

This court will review a trial court ruling not designated in the notice of appeal, including an appealable order, if the ruling “prejudicially affects the decision designated in the notice [of appeal].” RAP 2.4(b)(1). The writ of assistance involved Spark’s right to possession of the property after the conclusion of Knedlik’s homestead redemption period. The propriety of the writ is therefore unrelated to the validity or priority of Giovannini’s liens. Knedlik has not presented any argument suggesting that the writ of assistance prejudicially affected the summary judgment ruling on Giovannini’s liens. Accordingly, the order granting the writ of assistance is not within the scope of review.

Because Knedlik has not demonstrated that he has been aggrieved by the trial court’s rulings on appeal, Spark’s motion to dismiss him from the appeal is granted. We consider the arguments on appeal only to the extent they involve the validity and priority of Giovannini’s alleged liens.

#### Standard of Review

When reviewing a grant of summary judgment, an appellate court undertakes the same inquiry as the trial court. Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). We consider the evidence and the reasonable inferences therefrom in the light most favorable to the nonmoving party. Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that

the moving party is entitled to a judgment as a matter of law.” CR 56(c); White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). To the extent that Giovannini also challenges the trial court’s denial of her motion for reconsideration, we review that decision for an abuse of discretion. Drake v. Smersh, 122 Wn. App. 147, 150, 89 P.3d 726 (2004).

#### Giovannini’s Property Liens

Giovannini claims that she has enforceable liens on Spark’s property based on four promissory notes that Knedlik executed between 1990 and 1994, secured by deeds of trust, and a 1994 judgment. The six-year statute of limitations applies to any actions based on written agreements, including promissory notes and deeds of trust. See RCW 4.16.040(1); Walcker v. Benson & McLaughlin, P.S., 79 Wn. App. 739, 741, 904 P.2d 1176 (1995). RCW 7.28.300 authorizes the record owner of real estate to

maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an action to foreclose such mortgage or deed of trust would be barred by the statute of limitations, and, upon proof sufficient to satisfy the court, may have judgment quieting title against such a lien.

Giovannini did not submit any evidence controverting the trial court’s determination that the statute of limitations on the four notes and corresponding deeds of trust began to run by December 1994 and therefore expired no later than December 2000. Rather, she relies on the common law rule that the statute of limitations did not begin to run in favor of the mortgagor or the mortgagee “so long as the relation of mortgagor and mortgagee exists . . . .” Krutz v. Gardner, 25 Wash. 396, 402, 65 P. 771 (1901); see also Walcker, 79 Wn. App. at 742

(noting that because at common law a mortgage existed separately from the obligation that it secured, the mortgagee could foreclose on the mortgage even when the statute of limitations had run on the underlying debt). But even if the common law rule would otherwise apply to the facts of this case, the Washington Legislature expressly abandoned that proposition for mortgages and deeds of trust in RCW 7.28.300. See Walcker, 79 Wn. App. at 742–45.

Because there was no factual dispute that the statute of limitations had expired on the four promissory notes secured by deeds of trust, the trial court properly concluded that Giovannini's alleged liens were invalid and unenforceable.

Giovannini also relies on a 1994 judgment, originally entered in favor of Skagit Valley Publishing Company against Knedlik and later assigned to Giovannini. RCW 6.17.020 authorizes execution on a judgment for a 10-year period and provides for a one-time extension. But in order to obtain an extension, the judgment creditor must request the extension and pay the specified filing fee. See RCW 6.17.020(3). Giovannini failed to submit any evidence indicating that she paid the fee required to extend the judgment. The judgment therefore lapsed in 2004. The trial court did not err in concluding that Giovannini's judgment lien was invalid and unenforceable against Spark.

#### Judicial Estoppel

Even if we assume that Giovannini's liens were not time-barred, she has not demonstrated any error in the trial court's determination that she should be judicially



estopped from asserting these liens. Judicial estoppel is an equitable doctrine “that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.” Bartley-Williams v. Kendall, 134 Wn. App. 95, 98, 138 P.3d 1103 (2006). Three “core factors” guide the trial court’s determination of whether to apply judicial estoppel: (1) whether a party’s later position is clearly inconsistent with the earlier position; (2) whether judicial acceptance of the later position would create the perception that the party misled either the first or second court; and (3) whether the party asserting the inconsistent position would obtain an unfair advantage or impose an unfair detriment on the opposing party if not estopped. Ashmore v. Estate of Duff, 165 Wn.2d 948, 951–52, 205 P.3d 111 (2009). We review the trial court’s decision to apply judicial estoppel for an abuse of discretion. Bartley-Williams, 134 Wn. App. at 98.

In March 2007, Giovannini filed a chapter 13 bankruptcy petition, signed under penalty of perjury. In the supporting schedules, Giovannini stated that Knedlik’s debts to her had been assigned more than five years earlier and that the present value of the debts was \$0.00. She denied that she had any existing, future, contingent, or equitable interest in Knedlik’s former residence.

A bankruptcy debtor has an affirmative duty under the bankruptcy code to disclose all assets, including contingent and unliquidated claims. Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 539 n.1, 160 P.3d 13 (2007). Consequently, courts may apply judicial estoppel to bankruptcy debtors who fail to list potential legal claims and

then later pursue those claims in a different court. Arkison, 160 Wn.2d at 539.

Giovannini's failure to identify any interest in Knedlik's residence at the time of her bankruptcy filing in March 2007 is directly contrary to her claim in opposition to Spark's motion for summary judgment, in which she asserted secured interests worth more than \$1,000,000. Allowing her to maintain such claims now would support the appearance that she misled the bankruptcy court and her creditors and permit her to obtain an unfair advantage over Spark and her own creditors. See Skinner v. Holgate, 141 Wn. App. 840, 849–53, 173 P.3d 300 (2007).

Giovannini claims that she was not obligated to disclose her secured interests in Knedlik's property during the 2007 bankruptcy because she was holding the interests as the trustee of a revocable trust for her grandson. But Giovannini has not supported this assertion with citation to relevant authority. And in any event, she has not identified any evidence demonstrating the existence of such a trust or the transfer of her alleged interests into that trust.

The trial court did not abuse its discretion in ruling that Giovannini was judicially estopped from asserting her liens against Spark.

#### Tax Liens

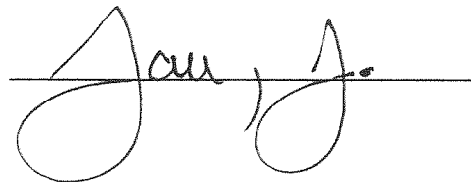
Giovannini next contends that she paid real estate taxes for several years on the property before Spark executed on its judgment. She argues that she therefore has tax liens on the property that are not subject to the statute of limitations and cannot be extinguished as a matter of law.

Giovannini did not raise this claim or submit supporting evidence until her CR 59 motion for reconsideration. The issue is therefore not preserved for appellate review, and the trial court did not abuse its discretion by denying the motion for reconsideration. See Wilcox v. Lexington Eye Inst., 130 Wn. App. 234, 241, 122 P.3d 729 (2005) (party not entitled to reconsideration under CR 59 by proposing new theories of the case that could have been raised before entry of an adverse decision). Moreover, because Giovannini failed to disclose the alleged liens in her bankruptcy filing, her allegations do not undermine the trial court's application of judicial estoppel.

Limitation on Oral Argument

Finally, Giovannini contends that the trial court improperly limited her opportunity to present oral argument at the hearing on the parties' cross motion for summary judgment. Because the record demonstrates that Giovannini had a full and fair opportunity to present her position to the trial court, the limitation of Giovannini's oral argument does not implicate due process. See Hanson v. Shim, 87 Wn. App. 538, 551, 943 P.2d 322 (1997). Giovannini has not demonstrated any error.<sup>2</sup>

We grant the motion to dismiss Knedlik as a party on appeal and affirm the entry of summary judgment in Spark's favor.

A handwritten signature in black ink, appearing to read "J. J. Spark", written over a horizontal line.

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<sup>2</sup> Because there are no factual issues as to the validity of Giovannini's alleged property liens and the trial court did not abuse its discretion in applying the doctrine of judicial estoppel, we need not decide whether the trial court correctly determined that Giovannini's property liens should be equitably subordinated to Spark's judgment lien.

64757-1-I/12

WE CONCUR:

Schiveller, J

Grosse, J